

Union Calendar No. 34

104TH CONGRESS  
1ST SESSION

**H. R. 988**

[Report No. 104-62]

**A BILL**

To reform the Federal civil justice system.

MARCH 1, 1995

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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### IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 1995

Mr. MOORHEAD (for himself, Mr. HYDE, and Mr. GOODLATTE) introduced the following bill; which was referred to the Committee on the Judiciary

MARCH 1, 1995

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 16, 1995]

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## A BILL

To reform the Federal civil justice system.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       *This Act may be cited as the “Attorney Accountability*  
5       *Act of 1995”.*

1 **SEC. 2. AWARD OF COSTS AND ATTORNEY'S FEES IN FED-**  
2 **ERAL CIVIL DIVERSITY LITIGATION AFTER AN**  
3 **OFFER OF SETTLEMENT.**

4 *Section 1332 of title 28, United States Code, is amend-*  
5 *ed by adding at the end the following:*

6 *“(e)(1) In any action over which the court has juris-*  
7 *isdiction under this section, any party may, at any time not*  
8 *less than 10 days before trial, serve upon any adverse party*  
9 *a written offer to settle a claim or claims for money or*  
10 *property or to the effect specified in the offer, including a*  
11 *motion to dismiss all claims, and to enter into a stipulation*  
12 *dismissing the claim or claims or allowing judgment to be*  
13 *entered according to the terms of the offer. Any such offer,*  
14 *together with proof of service thereof, shall be filed with the*  
15 *clerk of the court.*

16 *“(2) If the party receiving an offer under paragraph*  
17 *(1) serves written notice on the offeror that the offer is ac-*  
18 *cepted, either party may then file with the clerk of the court*  
19 *the notice of acceptance, together with proof of service there-*  
20 *of.*

21 *“(3) The fact that an offer under paragraph (1) is*  
22 *made but not accepted does not preclude a subsequent offer*  
23 *under paragraph (1). Evidence of an offer is not admissible*  
24 *for any purpose except in proceedings to enforce a settle-*  
25 *ment, or to determine costs and expenses under this sub-*  
26 *section.*

1       “(4) At any time before judgment is entered, the court,  
2 upon its own motion or upon the motion of any party, may  
3 exempt from this subsection any claim that the court finds  
4 presents a question of law or fact that is novel and impor-  
5 tant and that substantially affects nonparties. If a claim  
6 is exempted from this subsection, all offers made by any  
7 party under paragraph (1) with respect to that claim shall  
8 be void and have no effect.

9       “(5) If all offers made by a party under paragraph  
10 (1) with respect to a claim or claims, including any motion  
11 to dismiss all claims, are not accepted and the judgment,  
12 verdict, or order finally issued (exclusive of costs, expenses,  
13 and attorneys’ fees incurred after judgment or trial) in the  
14 action under this section is not more favorable to the offeree  
15 with respect to the claim or claims than the last such offer,  
16 the offeror may file with the court, within 10 days after  
17 the final judgment, verdict, or order is issued, a petition  
18 for payment of costs and expenses, including attorneys’ fees,  
19 incurred with respect to the claim or claims from the date  
20 the last such offer was made.

21       “(6) If the court finds, pursuant to a petition filed  
22 under paragraph (5) with respect to a claim or claims, that  
23 the judgment, verdict, or order finally obtained is not more  
24 favorable to the offeree with respect to the claim or claims  
25 than the last offer, the court shall order the offeree to pay

1 *the offeror's costs and expenses, including attorneys' fees,*  
2 *incurred with respect to the claim or claims from the date*  
3 *the last offer was made, unless the court finds that requiring*  
4 *the payment of such costs and expenses would be manifestly*  
5 *unjust.*

6       “(7) Attorney's fees under paragraph (6) shall be a  
7 reasonable attorney's fee attributable to the claim or claims  
8 involved, calculated on the basis of an hourly rate which  
9 may not exceed that which the court considers acceptable  
10 in the community in which the attorney practices law, tak-  
11 ing into account the attorney's qualifications and experi-  
12 ence and the complexity of the case, except that the attor-  
13 ney's fees under paragraph (6) may not exceed—

14               “(A) the actual cost incurred by the offeree for  
15 an attorney's fee payable to an attorney for services  
16 in connection with the claim or claims; or

17               “(B) if no such cost was incurred by the offeree  
18 due to a contingency fee agreement, a reasonable cost  
19 that would have been incurred by the offeree for an  
20 attorney's noncontingent fee payable to an attorney  
21 for services in connection with the claim or claims.

22       “(8) This subsection does not apply to any claim seek-  
23 ing an equitable remedy.”

1 **SEC. 3. HONESTY IN EVIDENCE.**

2 *Rule 702 of the Federal Rules of Evidence (28 U.S.C.*  
3 *App.) is amended—*

4 *(1) by inserting “(a) In general.—” before “If”,*  
5 *and*

6 *(2) by adding at the end the following:*

7 *“(b) Adequate basis for opinion.—Testimony in the*  
8 *form of an opinion by a witness that is based on scientific*  
9 *knowledge shall be inadmissible in evidence unless the court*  
10 *determines that such opinion—*

11 *“(1) is scientifically valid and reliable;*

12 *“(2) has a valid scientific connection to the fact*  
13 *it is offered to prove; and*

14 *“(3) is sufficiently reliable so that the probative*  
15 *value of such evidence outweighs the dangers specified*  
16 *in rule 403.*

17 *“(c) Disqualification.—Testimony by a witness who is*  
18 *qualified as described in subdivision (a) is inadmissible in*  
19 *evidence if the witness is entitled to receive any compensa-*  
20 *tion contingent on the legal disposition of any claim with*  
21 *respect to which the testimony is offered.*

22 *“(d) Scope.—Subdivision (b) does not apply to crimi-*  
23 *nal proceedings.”.*

24 **SEC. 4. ATTORNEY ACCOUNTABILITY.**

25 *(a) SANCTIONS.—Rule 11(c) of the Federal Rules of*  
26 *Civil Procedure (28 U.S.C. App.) is amended—*

1           (1) in the matter preceding paragraph (1) by  
2       striking “may” and inserting “shall”;

3           (2) in paragraph (1)(A)—

4               (A) in the second sentence by striking “, but  
5       shall” and all that follows through “corrected”;  
6       and

7               (B) in the third sentence by striking “may”  
8       and inserting “shall”; and

9           (3) in paragraph (2) by striking “A sanction  
10       imposed” and all that follows through “violation.”  
11       and inserting the following: “A sanction imposed for  
12       a violation of this rule shall be sufficient to deter rep-  
13       etition of such conduct or comparable conduct by oth-  
14       ers similarly situated, and to compensate the parties  
15       that were injured by such conduct. Subject to the lim-  
16       itations in subparagraphs (A) and (B), the sanction  
17       may consist of an order to pay to the other party or  
18       parties the amount of the reasonable expenses in-  
19       curred as a direct result of the filing of the pleading,  
20       motion, or other paper that is the subject of the viola-  
21       tion, including a reasonable attorney’s fee.”.

22       (b) *APPLICABILITY TO DISCOVERY.*—Rule 11 of the  
23       Federal Rules of Civil Procedure is amended by striking  
24       subdivision (d).

1 **SEC. 5. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

2       (a) *EFFECTIVE DATE.*—Subject to subsection (b), this  
3 Act and the amendments made by this Act shall take effect  
4 on the first day of the first month beginning more than  
5 180 days after the date of the enactment of this Act.

6       (b) *APPLICATION OF AMENDMENTS.*—

7           (1) The amendment made by section 2 shall  
8 apply only with respect to civil actions commenced  
9 after the effective date of this Act.

10          (2) The amendments made by section 3 shall  
11 apply only with respect to cases in which a trial be-  
12 gins after the effective date of this Act.